



Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
9 December 2021
English
Original: French

Committee on the Elimination of Discrimination against Women

Decision adopted by the Committee under article 4 (2) (c) of the Optional Protocol, concerning communication No. 145/2019^{*,**}

<i>Communication submitted by:</i>	M.A. (represented by counsel, Leila Boussemacer, of the Protestant Social Centre in Geneva)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Switzerland
<i>Date of communication:</i>	26 June 2019 (initial submission)
<i>References:</i>	Transmitted to the State party on 3 July 2019 (not issued in document form)
<i>Date of adoption of decision:</i>	1 November 2021
<i>Subject matter:</i>	Trafficking in persons; removal under the Dublin III Regulation
<i>Articles of the Convention:</i>	2 (d) and 6
<i>Article of the Optional Protocol:</i>	4 (2)

* Adopted by the Committee at its eightieth session (18 October–12 November 2021).

** The following members of the Committee participated in the examination of the present communication: Gladys Acosta Vargas, Hiroko Akizuki, Tamader Al-Rammah, Marion Bethel, Leticia Bonifaz Alfonzo, Louiza Chalal, Corinne Dettmeijer-Vermeulen, Naéla Gabr, Hilary Gbedemah, Dalia Leinarte, Rosario G. Manalo, Lia Nadaraia, Aruna Devi Narain, Ana Peláez Narváez, Bandana Rana, Rhoda Reddock, Elgun Safarov, Natasha Stott Despoja, Genoveva Tisheva, and Franceline Toé-Bouda. In accordance with rule 60 (1) (c) of the Committee's rules of procedure, Committee members Nicole Ameline and Nahla Haidar did not participate in the examination of the communication.



1.1 The author is M.A., an Eritrean national born on 20 September 1977. She applied for asylum in the State party, which ordered her expulsion to France pursuant to the Dublin III Regulation of the European Union. She states that her expulsion would violate her rights under articles 2 (d) and 6 of the Convention on the Elimination of All Forms of Discrimination against Women. The Convention and the Optional Protocol thereto entered into force for the State party on 26 April 1997 and 29 December 2008, respectively. The author is represented by counsel, Leila Boussemacer, of the Protestant Social Centre in Geneva.

1.2 On 3 July 2019, when the communication was registered, the Committee, through its Working Group on Communications under the Optional Protocol, pursuant to article 5 (1) of the Optional Protocol and rule 63 of the Committee's rules of procedure, requested the State party to refrain from expelling the author while her communication was under consideration. On 9 July 2019, the State party informed the Committee that it had requested the competent authority not to take any steps to remove the author while her communication was under consideration by the Committee or while the suspensive effect was in place.

Facts as submitted by the author

2.1 In 2007, the author left Eritrea for Ethiopia for political reasons. Through an intermediary in Ethiopia, she obtained false Ethiopian identity documents and an offer of employment in Lebanon, where she worked in the home of a Lebanese family who exploited her for nearly 10 years, until 2018. Her passport was in the family's possession; she was subjected to insults, threats and violence, was not allowed to take leave, to go out or to see a doctor, and received a monthly salary of \$250–\$275 in exchange for working from 6.30 a.m. to 11 p.m. on a daily basis.

2.2 In 2018, her employers went on holiday to France and took her with them. She took that opportunity to flee to Switzerland, where her brother lives.

2.3 On 6 September 2018, the author filed an application for asylum with the State Secretariat for Migration, which identified her as a "potential victim of trafficking in persons".

2.4 On 23 January 2019, the State Secretariat for Migration issued a decision of non-consideration and ordered the author's return to France, in accordance with the Dublin III Regulation of the European Union. However, when requesting France to take charge of the author, the Swiss authorities failed to indicate that she had been identified as a potential victim of trafficking in persons.

2.5 On 31 January 2019, the Protestant Social Centre in Geneva, which is responsible for identifying victims for the canton of Geneva, identified the author as a "victim of trafficking in persons".

2.6 The author's mental health was subsequently evaluated, and medical reports show that she suffers from depression and complex post-traumatic stress disorder related to the trauma that she endured; that she has fluctuating and recurrent suicidal thoughts; that her psychosocial environment is of critical importance for her treatment; and that geographical proximity to her brother was an integral part of her treatment.¹

2.7 On 4 February 2019, the author filed an appeal against the decision of the State Secretariat for Migration, which was rejected by the Federal Administrative Court on 14 February 2019. In the appeal, the author argued that the rules of international protection for victims of trafficking had been violated, that her medical condition had

¹ The author has submitted medical certificates in support of her statements.

not been considered, and that the risks of revictimization had not been taken into account.

2.8 On 12 April 2019, the author filed a request for reconsideration of the removal decision with the State Secretariat for Migration, which was rejected on 17 April 2019. On 20 May 2019, the author appealed to the Federal Administrative Court, which rejected her appeal on 12 June 2019.

2.9 The author indicates that she has exhausted all available domestic remedies and that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

Complaint

3.1 The author claims that the State party has violated article 2 (d) of the Convention. She states that the State party has completely overlooked the fact that she will find herself in a country where she does not speak the language, in a situation of social precariousness that may prevent her from contacting the appropriate services or associations in order to apply for asylum or a residence permit, or from finding accommodation, and that, without health insurance, she will only be able to receive basic care, which does not include mental health monitoring in a stable environment. She adds that, even if she manages to find appropriate services to assist her in filing an asylum application, the time period between her arrival and the date on which she will begin to benefit from a medical and social safety net such as that from which she is currently benefiting will likely worsen her medical condition, potentially leading to a high risk of suicide, according to her doctors.

3.2 The author also argues that the State party has violated article 6 of the Convention. She states that, although the State Secretariat for Migration identified her as a potential victim of trafficking in persons, she has received none of the specific assistance that she needs and to which she is entitled in the State party. Moreover, the risk of revictimization in the event of her removal to France was not analysed or taken into account in the decisions of the State party, which has requested no further information from the French authorities in order to assess that risk and the risk of her being subsequently expelled to Ethiopia. In addition, when requesting France to take charge of the author, the State Secretariat for Migration did not inform it of her status as a potential victim of trafficking and did not seek specific guarantees that she would be effectively protected. The State party also failed to take into account the specific situation of asylum seekers in France. The author thus considers that the State party has not taken appropriate measures to prevent her from being re trafficked, despite the significant risks thereof.

State party's observations on admissibility and the merits

4.1 The State party submitted its observations on admissibility and the merits on 16 December 2019. It considers that the communication is inadmissible because not all remedies were exhausted and because the author's claims are manifestly unfounded and insufficiently substantiated. In the alternative, it states that the author's expulsion would not violate the Convention.

4.2 First, the State party notes that the author of the communication is M.A., an Eritrean national born on 20 September 1977. However, according to the information on her French visa, the author's name is M.K., she was born on 20 September 1973 and she is of Ethiopian nationality. The author contests this identity, which is on record with the State Secretariat for Migration.

4.3 The State party argues that, in accordance with current national case law, articles 2 (d) and 6 of the Convention cannot be considered to be directly applicable by the State party because the wording thereof is not sufficiently clear or precise.

4.4 The State party maintains that the communication is inadmissible because not all domestic remedies were exhausted, as the author first invoked the Convention only in her appeal of 20 May 2019 against the decision of the State Secretariat for Migration to reject her request for reconsideration, whereas, according to the State party, the local authorities should have the opportunity to examine the merits of the applicant's arguments concerning a possible violation of the Convention and to take a decision thereon.²

4.5 The State party further maintains that the communication is inadmissible because the author's claims are manifestly unfounded and insufficiently substantiated.

4.6 With regard to the alleged violation of article 2 (d) of the Convention, the State party first asserts that this provision does not apply to the author's claims that, in France, she would find herself alone to fend for herself in a country where she does not speak the language; that the situation of social precariousness in which she would find herself would prevent her from contacting the appropriate services or associations in order to apply for asylum and take the other steps required to settle in the country; and that, even if she did manage to find appropriate services to assist her in filing an asylum application, the period of time between her arrival and the date on which she would begin to benefit from a medical and social safety net such as that from which she is currently benefiting would likely be significant and would worsen her medical condition, potentially leading to a risk of suicide.

4.7 Second, the State party points out that the Federal Administrative Court, in its decision of 14 February 2019, found that the author had in no way demonstrated that, if she were transferred to France, she might be treated in a manner inconsistent with international obligations after submitting an asylum application there. The State party also indicates that the author's alleged health problems cannot be considered so serious that her transfer to France would be unlawful, and that the care and treatment she still needs can be continued in France, which has health-care facilities similar to those in the State party. The State party adds that, with respect to the risk of an escalation of suicidal thoughts, the Federal Administrative Court recalled that suicidal thoughts are commonly observed in persons facing imminent removal. Such thoughts do not in themselves preclude the enforcement of the removal order; rather, they constitute a specific type of risk that must be taken into consideration.

4.8 With regard to the allegation that the State party violated article 6 of the Convention by failing to seek specific care and protection guarantees from the French authorities, the State party points out that, when requesting the French authorities to take charge of the author on 23 November 2018, the State Secretariat for Migration indicated, under the heading "Other relevant information", that she was a potential victim of trafficking in persons. Furthermore, after the author consented to her data being transmitted to the Federal Office of Police, the Office contacted the International Criminal Police Organization (INTERPOL) in Paris, having first determined that her statements were sufficiently actionable.

4.9 With regard to the allegation that the State party violated article 6 of the Convention because the author did not receive specific assistance in the State party as a result of her status as a potential victim of trafficking in persons, the State party affirms that the author cannot receive such assistance, as provided for by the Federal Act on Foreign Nationals and Integration of 16 December 2005, owing to the

² See *M.E.N. v. Denmark* (CEDAW/C/55/D/35/2011) and *Rahime Kayhan v. Turkey* (CEDAW/C/34/D/8/2005).

exclusivity principle applicable to the asylum procedure, which dictates that a person who is already receiving support as an asylum seeker cannot receive further support, such as assistance because he or she has been identified as a potential victim of trafficking in persons.

4.10 More generally, the State party asserts that trafficking in persons is addressed in a gender-neutral manner in the State party and that there is no evidence that women are discriminated against in this area or that the author is being discriminated against simply because she is a woman.

4.11 In the alternative, the State party contests the claim that it has violated the Convention, as the author has not demonstrated that, if she were removed to France she would be exposed to a real, personal and foreseeable risk of serious forms of discrimination in violation of article 2 (d),³ or that she would be re-exposed to a real and foreseeable risk of trafficking in persons, in violation of article 6 of the Convention. In its decision of 14 February 2019, the Federal Administrative Court also states that there is no serious reason to believe that there are systemic flaws in the asylum procedure and reception conditions for asylum seekers in France that would lead to a risk of inhuman or degrading treatment.

Author's comments on the State party's observations on admissibility and the merits

5.1 On 23 March 2020, the author submitted her comments on the State party's observations.

5.2 With regard to the State party's argument that the communication is inadmissible because the author did not invoke the Convention from the beginning of the domestic proceedings, the author states that, in its decision of 12 June 2019, the Federal Administrative Court took into account her claim that she is a victim of trafficking in persons in its analysis of the case on the merits. On that basis, she concludes that all domestic remedies were indeed exhausted and that the State party did have the opportunity to consider the merits of the arguments put forward in relation to violations of the Convention.

5.3 The author adds that, when requesting France to take charge of her, the State party indicated that "according to her statements, the author [was] a potential victim of trafficking in persons", but failed to mention the fact that it had itself considered her a potential victim of such trafficking. The State party therefore cannot convincingly claim that it alerted the responsible State to this matter. Furthermore, the State party did not bother to inquire to which city the author would be removed or even whether a specialized association would be present to assist her upon her arrival. Lastly, the State Secretariat for Migration did not specifically inform France that the Federal Office of Police had transmitted information to INTERPOL in Paris.

5.4 The author refers to decision No. D-3292/2019 of 3 October 2019 of the Federal Administrative Court, which contains a reference to the report of the State Secretariat for Migration of 25 January 2019 on removals under the Dublin III Regulation. In the report, the Secretariat states that, in France, waiting times for official registration are often very long and that, even then, only half of asylum seekers are granted accommodation. The Court notes that it is only after the asylum application has been officially registered that asylum seekers are entitled to accommodation and other reception services, and that, in the meantime, they live on the streets. The author also refers to a report issued by the Asylum Information Database,⁴ according to which

³ See *N.Q. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/63/D/62/2013).

⁴ Laurent Delbos and Claire Tripier, "Country report: France", updated in 2018 (Asylum Information Database), p. 61 ff.

there are specific indications that the vulnerability of potential victims of trafficking in persons in France cannot always be adequately addressed. The author adds that much of the violence experienced by women asylum seekers occurs when they are in camps or are forced to sleep on the streets.⁵ As for psychiatric care in France for asylum seekers, the author mentions a France Info article from September 2019 indicating that asylum seekers very rarely have access to psychologists.

5.5 If the responsible State does not take charge of the author immediately and in accordance with her needs, she is likely to be left to fend for herself, unable to apply for asylum and, in the meantime, without a place to live, money or access to medical and psychiatric care, a situation that will likely worsen her state of health and potentially lead her to act upon her suicidal thoughts.

5.6 The author claims that the State party violated article 2 (d) of the Convention by ordering her removal and upholding the order on appeal, as it should have ensured that she would receive all the necessary protection in France. However, as it did not know to which location in France she would be removed, it could take no preventive measures. The author's removal to France therefore exposes her to a real and foreseeable risk of being resubjected to trafficking or violence.

5.7 The author also claims that the State party violated article 6 of the Convention, as its decisions do not take into account her need for protection and expose her to the risk of being found by her former exploiters or of being exploited again by other traffickers, given the very precarious situation of asylum seekers in France.

Issues and proceedings before the Committee

Considerations of admissibility

6.1 In accordance with rule 64 of its rules of procedure, the Committee must decide whether the communication is admissible under the Optional Protocol.

6.2 In accordance with article 4 (2) (a) of the Optional Protocol, the Committee has ascertained that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the State party's argument that, in accordance with current national case law, articles 2 (d) and 6 of the Convention cannot be considered to be directly applicable by the State party because the wording thereof is not sufficiently clear or precise. The Committee recalls its concluding observations on the combined fourth and fifth periodic reports of Switzerland ([CEDAW/C/CHE/CO/4-5](#)), in which it expressed concern that, in accordance with the principle of monism, the decision to directly apply provisions of the Convention is at the discretion of the Federal Court and other judicial authorities at the federal and cantonal levels. The Committee also recalls that, under article 2 of the Optional Protocol, it may examine alleged violations of any of the rights set forth in the Convention, including the articles contained in its Part I, and that it has found violations of these articles in the past.

6.4 The Committee notes the State party's contention that not all domestic remedies were exhausted in the present case, as it was only in her appeal of 20 May 2019 against the decision of the State Secretariat for Migration to reject her request for reconsideration that the author first invoked the Convention. The Committee recalls that, in accordance with article 4 (1) of the Optional Protocol, authors must use all available domestic remedies. It also recalls its jurisprudence, which establishes that authors must have raised the claims that they wish to bring before the Committee in

⁵ Olga Bautista Cosa, "Les violences à l'égard des femmes demandeuses d'asile et réfugiées en France", Les cahiers du social, No. 40 (France terre d'asile, 2018).

substance at the domestic level⁶ in order to give the domestic authorities and courts an opportunity to take a decision thereon.⁷ In the present case, the Committee notes that the State party refers to communication No. 8/2005, in which the Committee found that the author should have put forward arguments raising the matter of discrimination based on sex in substance and in accordance with procedural requirements during the domestic proceedings. However, the Committee considers that, in the present case, by invoking her status as a victim of trafficking in persons from the beginning of the domestic proceedings, the applicant did indeed raise the matter of discrimination based on sex in substance before the national authorities, who thus had the opportunity to examine those claims.⁸ The Committee therefore considers that all domestic remedies were exhausted and that article 4 (1) of the Optional Protocol does not constitute a barrier to the admissibility of the communication.

6.5 The Committee notes the State party's claim that trafficking in persons is addressed in a gender-neutral manner in the State party and that there is no evidence that women are discriminated against in this area or that the author is being discriminated against simply because she is a woman. The Committee nevertheless refers to its general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, in which it indicates that a disproportionate number of migrant women are engaged in informal and precarious employment, in particular in sectors categorized as "low-skilled", such as domestic services. Trafficking in persons cannot therefore be addressed in a gender-neutral way because women working in this sector are at a higher risk of becoming victims of trafficking in persons.

6.6 The Committee notes the author's statement that, although the State Secretariat for Migration identified her as a potential victim of trafficking in persons, she has received none of the specific assistance that she needs and to which she is entitled in the State party. It also notes the State party's reply that the author cannot receive the specific assistance provided for by the Federal Act on Foreign Nationals and Integration of 16 December 2005 owing to the exclusivity principle applicable to the asylum procedure. The Committee observes that the author does not object to the protection measures taken by the State party, but rather to the lack of assistance measures specific to her status as a potential victim of trafficking in persons. In this connection, the Committee considers that the author has failed to provide sufficient information concerning the assistance that she allegedly needs and could have received under the Federal Act on Foreign Nationals and Integration but has been denied to her owing to the exclusivity principle applicable to the asylum procedure. The Committee therefore considers that the author has not adequately substantiated these allegations for the purposes of admissibility and declares this part of the communication inadmissible under article 4 (2) (c) of the Optional Protocol.

6.7 The Committee notes the author's claim that her removal to France would constitute a violation of articles 2 (d) and 6 of the Convention, owing to language difficulties and challenges in accessing social and mental health services. The Committee also notes the author's statements regarding the vulnerability of many asylum seekers, including women, pending registration in France, and the risk that she would be re trafficked if she found herself in this vulnerable situation. The Committee further notes the State party's argument that there is no serious reason to believe that there are systemic flaws in the asylum procedure and reception conditions for asylum seekers in France that would lead to a risk of inhuman or degrading

⁶ See *Rahime Kayhan v. Turkey* (CEDAW/C/34/D/8/2005), para. 7.7.

⁷ See *N.S.F. v. United Kingdom of Great Britain and Northern Ireland* (CEDAW/C/38/D/10/2005), para. 7.3.

⁸ See the Committee's views in *N v. Netherlands* (CEDAW/C/57/D/39/2012), para. 6.4.

treatment. In the light of the information before it, and taking into account the author's concerns with regard to the vulnerable situation of a number of asylum seekers, in particular women, pending registration in France,⁹ the Committee considers that the author has not sufficiently substantiated her claim and developed the facts and arguments put forward, for the purposes of admissibility, to demonstrate that she would face a real, personal and foreseeable risk of serious forms of discrimination or being re-trafficked if she were removed to France and that the French authorities are not in a position to effectively protect her. The Committee further considers that, if the author so wishes, the State party must inform France that the author is recognized as a potential victim of trafficking in persons so that France can take the necessary steps to ensure that she receives appropriate support.

7 In view of the foregoing, the Committee decides:

- (a) That the communication is inadmissible under article 4 (2) (c) of the Optional Protocol;
 - (b) That the present decision shall be communicated to the State party and to the author.
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⁹ Laurent Delbos and Claire Tripier, "Country report: France", updated in 2018 (Asylum Information Database), p. 61 ff. Olga Bautista Cosa, "Les violences à l'égard des femmes demandeuses d'asile et réfugiées en France", Les cahiers du social, No. 40 (France terre d'asile, 2018).